

## The Invisible Slip and Fall: The Importance of Record Keeping

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Most defense attorneys will agree that more often than not, there are no witnesses to the personal injury claims we investigate and litigate. In fact, there is often no record at all about the incident or occurrence that provides any helpful facts about what happened. This lack of investigative documentation leaves clients and attorneys both asking how the incident occurred, or even if the occurrence really happened at all. Many incidents occur in private areas, such as hotel rooms or public bathrooms, where the presence of a witness is less likely and surveillance cameras are not present. Often, the injured claimant will not even report the incident until days after it occurred, making any investigation into the claimed dangerous condition or alleged premises defect all the more difficult.

Poor record keeping in general, coupled with the failure to obtain details, facts, and circumstances surrounding an incident, often results in clients being left with no alternative but to defend a claim with little more to work with than the claimant's unsubstantiated version of what happened. Most retail stores, restaurants, and hotels have policies and procedures in place for performing daily inspections, cleaning, and maintaining the premises as well as responding to claimed personal injuries that occur on their premises. Usually, this entails some combination of keeping daily inspection logs and maintenance logs, filling out information in an incident report, gathering a claimant's personal information, reporting a claim to their insurer, and taking photographs of the premises in question and even possibly the claimant's alleged injuries.

Premises owners and operators should take particular care in ensuring daily logs are timely completed and gathering information as soon as they learn that a claimed personal injury has occurred on their premises. Consistent daily recordkeeping, quick response time, and attention to reported injuries can preserve evidence and serve to help prevent false or unsupported claims from evolving into frivolous lawsuits. Recommended investigative actions include immediately inspecting and photographing the premises in question, interviewing the claimant and any witnesses, and creating a thorough written account of the incident.

Employees should be trained on the importance of complying with company policies of daily log keeping and gathering information when responding to incidents. This training should include an explanation of the significance that a personal injury lawsuit can have on a company along with an overview of the process and cost of defending a personal injury lawsuit. Incident report forms should be created to set forth very specific information including at a minimum the following: the date of the occurrence, the time of the occurrence, a description of the incident, a description of the claimed defective condition, a description of the claimant, a summary of the claimed injuries, whether medical attention was offered, full contact information for the claimant and any witnesses, a summary of any eyewitness accounts, and the name and contact information for the investigating employee.

Employees must understand that information gathering is a key component of the defense of a personal injury claim. For example, photographs taken during an investigation of small drops of water on which a claimant contends she slipped

could easily be used to contradict a claimant's later testimony that a spill was much larger than what the photographs demonstrate. Information contained in a detailed incident report may also be used to controvert information contained in the claimant's medical records. Additionally, an incident report indicating that a claimant was using a cell phone or otherwise distracted at the time of an incident might help impute some liability to the claimant.

Although evidentiary objections to evidence obtained in an incident investigation may arise, thorough record keeping allows the defense to paint a clearer picture for the jury of what actually happened and can even provide tangible evidence to controvert a claimant's version of a story. Additionally, if premises owners are performing daily inspections of their premises and conducting investigations into claims as part of a regular business practice, records created as a result of those investigations are more likely to fall into an evidentiary business records exception, which further bolsters the admissibility of the investigation's findings in the event of litigation. Ultimately, although the task may seem daunting, the extra time and effort spent logging day-to-day premises activities and collecting evidence in the initial investigation of a reported personal injury could serve the defense of personal injury cases well.

## **Related Practices**

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